facts which are found to constitute special reasons entitling the court to refrain from imposing disqualification. In the case now before me this has been done but I mention this decision because, in my opinion, it is of importance that it should be generally known and applied.

The Deputy Public Prosecutor who argued the appeal before me agreed that, had the Magistrate in this case realised that he was bound in law to disqualify the respondent, he might have imposed a lesser penalty. In *Whittal v. Kirby*[1] it is said :—

> "The Act has left the penalty whether of fine or imprisonment entirely in the court's discretion. It is, therefore, open to them, if they see fit, to mitigate the penalty because disqualification will follow."

I think it is more than probable, therefore, that had the Magistrate correctly interpreted the law he might either have dealt with the respondent as a first offender under section 294 of the Criminal Procedure Code or have imposed a nominal fine because of the disqualification which would follow. He mentioned the following mitigating circumstances which he had taken into account in fixing the fine :—

(i) Accused is a poor man earning $65 per month.

(ii) No accident occurred and no injury was caused to any one.

(iii) As a result of the commission of this offence, accused had been dismissed from the service by his employer.

(iv) Accused is a first offender.

For these reasons I reduced the fine to a nominal one and imposed upon the respondent disqualification from holding or obtaining a driving licence for twelve months from the date of conviction.

I had a further reason for making a substantial reduction in the fine in that this is the first case of its kind, as far as I am aware, that has arisen since the liberation although the law was the same under section 28 of the Road Traffic Enactment, 1937. Professional drivers will, however, have to realise that an offence against this section will, in most cases, result in their being disqualified from driving for at least a year in addition to their being liable to a fine or to a term of imprisonment, which, for a first offence may extend to six months. The nominal fine imposed in the present case is not intended to be any indication as to the proper penalty to be imposed upon future offenders.

Order accordingly.

PUBLIC PROSECUTOR v. MOHAMED JEE.

[A. Cr. J. (Briggs, J.) December 16, 1952]

[K.L. — Criminal Appeal No. 64 of 1952]

Motor Vehicles Third Party Risks Regulations, Reg. 3(1) and (2) — Driving without 3rd Party Insurance — Disqualification — Special reasons.

The accused had been convicted for driving without 3rd party insurance. The learned Magistrate did not disqualify the accused from holding a driving licence and it was not clear why he did not do so. The Public Prosecutor appealed against the inadequacy of the sentence as provided in Reg. 3(2) of the Motor Vehicles Third Party Risks Regulations which makes it obligatory to disqualify the accused unless for "special reasons" the Court thinks fit to order otherwise.

Held: (1) following **Public Prosecutor v. M. Karthiah**[1], the fact that hardship will result if the licence of the particular driver is suspended is not a special reason. "Special reason" must pertain to the offence itself and not to the offender; (2) the facts relied upon as special reasons must, unless admitted, be proved by evidence, and also that the special reasons must be fully and clearly stated by the Court on deciding not to disqualify; (3) as regards the fine imposed, it is open to the Magistrate to consider the hardship caused by the disqualification when he assesses the amount of the fine.

Case referred to :—

(1) *Public Prosecutor v. M. Karthiah* p. 52 *ante.*

CRIMINAL APPEAL from the Magistrates' Court at Kuala Lumpur.

G. H. Summerfield (D.P.P.) for the appellant.

Respondent in person.

Briggs, J. (delivering oral judgment said) : — This is an appeal by the Public Prosecutor against inadequacy of sentence on convictions for using motor vehicles without proper third party insurance. Regulation 3(1) of the Motor Vehicles Third Party Risks Regulations, Gazette Notification No. 452 of 30th March, 1946, makes it an offence not to have adequate third party insurance, and Regulation 3(2) of the same Regulations makes obligatory, as part of the penalty for such an offence, disqualification from holding or obtaining a driving licence for a period of twelve months at least, unless the Court "for special reasons" thinks fit to order otherwise. In this case the learned Magistrate decided not to order disqualification, but it is not clear from the Grounds of Judgment why he did not do so. It may be that he was unaware of the provision in question; but it seems more probable that he thought the fine a sufficient punishment and did not order disqualification for that reason. A long line of English authorities, which I need not trouble now to detail, show that in these circumstances the 'special reasons' must pertain to the offence itself, and not to the offender. It is, for example, not a special reason that particular and grave hardship will result if the licence of the particular

driver is suspended. The authorities also show that the facts relied upon as special reasons must, unless admitted, be proved by evidence, and also that the special reasons must be fully and clearly stated by the Court on deciding not to disqualify.

I say it is not necessary for me to detail the references to those decisions because they are quoted and have been acted on in the Federation by the High Court. In the case of *Public Prosecutor v. M. Karthiah*[1], Mr. Justice Spenser Wilkinson held that the English authorities relating to 'special reasons' apply in this country, and I have no reason whatever to differ from that decision. On the other hand, I entirely agree with it. That case concerned driving under the influence of drink, but the reasoning is exactly applicable to this case. It is, therefore, clear that the learned Magistrate ought to have ordered disqualification for at least twelve months and I amend his order by making that order of disqualification now. To that extent the appeal is allowed.

As regards the fine imposed, it is open to the Magistrate to consider the hardship caused by disqualification when he assesses the amount of the fine, and to make it correspondingly lower than it would have been. This appears to me to have been a case where the failure to insure was due to a mistake and negligence rather than to any more culpable frame of mind. In the circumstances, and particularly in view of the further penalty of disqualification, I am not prepared to say that the fines were inadequate. The appeal will be allowed, the convictions are confirmed, but the sentences are amended by adding an order for disqualification from holding or obtaining a driving licence for twelve months from the date of the conviction.

Convictions confirmed.
Appeal allowed.

LIM BENG CHYE v. SALLY LEONG & ORS.

[C. A. (Mathew, C.J., Sir Charles Murray-Aynsley, C.J. (S.) and Pretheroe, J.) February 13, 1953]

[Penang — F.M. Civil Appeal No. 35 of 1952]

Will — Construction — Bequest — Intention of the testator — Application of the in terrorem rule.

This case concerns the construction of Clause 13 in the Will of a Chinese testator. The clause reads: "13. I devise and bequeath all my property of whatever nature and wheresoever situate of which I shall die possessed and which shall not be otherwise disposed of (except my property in China) unto my trustees Upon Trust to sell call in and convert the same into money (with power in their discretion to postpone such sale call in and conversion) and after payment thereout of my debts and funeral and testamentary expenses and the legacies hereinbefore directed to be paid to invest the residue of such moneys and to stand possessed of such investments and of all parts of my real and personal estate for the time being unconverted (hereinafter called my residuary estate) Upon Trust to pay out of the income of my residuary estate in the first place and out of the capital thereof if such income be insufficient the sums directed to be paid under clauses 9, 10, 11 and 12 hereof and until my youngest son living at my death shall attain the age of 21 years or if he shall die without having attained the age of 21 years then until such time as he would if living have attained such age Upon Trust as to both the capital and income of my residuary estate to pay and divide the same equally among my said wives Yeoh Ah Hong and Queh Ah Gaik and my sons Lim Beng Hong, Lim Beng Choon, Lim Beng Sai, Lim Cheng Hooi, Lim Weng Hooi, Lim Beng Chye and Lim Chit Bah and my nephew Lim Joo Huat the son of my elder brother Lim Kiah Sah and any other sons that may hereafter be born to me by my said wives Yeoh Ah Hong and Queh Ah Gaik, Provided that if either of my said wives shall not remain my widow or lead a chaste life or shall die before the period fixed for the division of my residuary estate her share shall go equally to my said sons Lim Beng Hong, Lim Beng Choon, Lim Beng Sai, Lim Cheng Hooi, Lim Weng Hooi, Lim Beng Chye and Lim Chit Bah my nephew Lim Joo Huat and any other sons that may hereafter be born to me by my said wives Yeoh Ah Hong and Queh Ah Gaik. And provided that if any of my said sons Lim Beng Hong, Lim Beng Choon, Lim Beng Sai, Lim Cheng Hooi, Lim Weng Hooi, Lim Beng Chye and Lim Chit Bah, my nephew Lim Joo Huat and any other sons that may hereafter be born to me by my said wives shall die before the period fixed for the division of my residuary estate leaving male issue his share shall go to such male issue equally if more than one but if he shall not leave any male issue but shall leave a lawful widow and female issue his share shall go to such lawful widow and female issue equally if more than one provided such lawful widow shall remain the widow of such deceased son or nephew and lead a chaste life."

Held (Mathew, C.J. and Sir Charles Murray-Aynsley, C.J. (S.); Pretheroe, J. dissenting): the testator's intention is clear. He provided in his will for the maintenance of the members of his family while they remained in the family and, apart from certain provisions for payments to his daughters on their marriage, the estate was to be applied for the benefit of the members of the family. His intention was not to penalise widows who re-married, but to insure that all members of the family should be provided for, so long as they remained within the family. Appeal allowed.

Cases referred to:—

(1) *In re Whiting's Settlement,* (1905) 1 Ch. 96 at 115.
(2) *Marples v. Bainbridge,* 1 Mad. 590 at 592.
(3) *Jones v. Jones,* 1 Q.B.D. 279 at 281.
(4) *Perrin v. Morgan* (1943) A.C. 399; (1943) 1 All E.R. 187.
(5) *Harvey v. Aston* 1 Atk. 361.
(6) *Hodgson v. Ambrose* 99 E.R. 216 at 219.

COURT OF APPEAL.

N. A. Marjoribanks and *M. N. Cumarasami* for the appellant.